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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/523,539	03/10/2000	Sandeep Gulati	VIALO-04	4738

26686 7590 07/23/2002

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EXAMINER

KIM, YOUNG J

ART UNIT	PAPER NUMBER
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1637

DATE MAILED: 07/23/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/523,539

Applicant(s)

GULATI ET AL.

Examiner

Young J. Kim

Art Unit

1637

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 June 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Comments above.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 8.

Claim(s) withdrawn from consideration: 6, 7 and 9-25.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

*John S. Brusca*  
JOHN S. BRUSCA, PH.D  
PRIMARY EXAMINER

Continuation of 2. NOTE: The rejection of claim 8 under 35 U.S.C. 101 as claiming the same invention as that of claim 34 of prior U.S. Patent no. 6,245,511, maintained in the Office Action mailed on April 5, 2002 is maintained for the reasons of record. Applicants' arguments received on June 4, 2002 have been fully considered but they are not found persuasive. Applicants argue that claim 8 as amended include the step of identifying hybridization activity from the microarray output pattern and thus non-coextensive in scope to that of claim 34 of the cited U.S. Patent. This point is not found persuasive because the newly introduced limitation was already set forth in the original claim 8, wherein it recited, "mapping the output patterns representative of hybridization activity to respective coordinates." The identification of the hybridization activity is achieved by the generation of the viral diffusion curve, a limitation which was already rejected as being duplicative in scope. Therefore, the Applicants' argument is not found persuasive and the rejection is maintained. Furthermore, Applicants are advised that claims 26, 27, 29, 30-34, 37, 38, 40, and 42-44, would be rejected under the obviousness-type double patenting were the amendment to be entered. Applicants are also advised that claims 28 and 35 recite new limitations which raise new issues and would require a new search and consideration, rendering the claims not entered. Finally, claims 36, 39, and 41 do not require the construction of viral diffusion curve, thus are considered to be an invention that was not originally prosecuted on the merits, raising new issues and requiring further consideration.

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7-22-02